

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 1500 (Delegate McIntosh)
Environmental Matters

Lead Risk Reduction - Challenges to Compliance Reports

This bill alters one of the grounds for finding that a compliance report is not conclusive proof of, or a rebuttable presumption that, an owner of affected property under the Lead Poisoning Prevention Program within the Maryland Department of the Environment (MDE) is in compliance with specified risk reduction standards. The bill also establishes provisions regarding affidavits and evidentiary hearings.

The bill takes effect June 1, 2004. The bill applies to all cases pending before a court in which a trial has not commenced by that date.

Fiscal Summary

State Effect: Because it is assumed that the bill's changes would apply in a limited number of cases, State finances should not be significantly affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill provides that, instead of proof of actual fraud, there must be proof that the report contains a false statement of material fact that was intentionally made as the result of the payment or offering of money or other consideration by the owner to the person performing the inspection or the person submitting the report. An allegation to that effect must be accompanied by an affidavit. On motion by the owner

for a hearing on the allegation, the court must immediately notify all affected parties, allow a discovery period of up to 90 days, and schedule an evidentiary hearing within 120 days after the notice is provided. Hearings are limited to the issue of whether the party making the allegation can demonstrate a reasonable likelihood of success at proving the facts essential to support their claim. If the court finds that there is no such reasonable likelihood of success, the court must order that the report or statement be submitted to MDE and that it is conclusive proof (for risk reduction standards) or that it shall create a rebuttable presumption (for modified risk reduction standards) that the owner is in compliance with those standards for the affected property during the period for which the certification is effective.

Current Law: Any person performing lead-contaminated dust testing or conducting inspections must be accredited by MDE and must submit a verified report of the result of the lead-contaminated dust testing or visual inspection to MDE, the owner, and the tenant of the affected property. A report submitted that certifies compliance for an affected property with the risk reduction standard is conclusive proof that the owner is in compliance with the standard during the period for which the certification is effective, unless there is: (1) proof of actual fraud as to that affected property; (2) proof that the work performed in the affected property was not performed by or under the supervision of accredited individuals; or (3) proof that the owner failed to respond to a complaint regarding the affected property.

An owner of an affected property must verify satisfaction of the modified risk reduction standard by submitting a statement of the work performed on the property to MDE. The statement, which must be verified by the owner and the tenant, or the final report of the inspector, creates a rebuttable presumption that may be overcome by clear and convincing evidence that the owner is in compliance with the modified risk reduction standard unless there is: (1) proof of actual fraud; or (2) proof that the work performed on the affected property was not performed by or under the supervision of accredited individuals.

Background: MDE advises that it is not aware of anyone alleging that a compliance report contained a false statement of material fact intentionally made as a result of payment or offering of money or other consideration. For that matter, MDE is not aware of anyone alleging actual fraud under the provisions amended by the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Judiciary
(Administrative Office of the Courts), Department of Legislative Services

Fiscal Note History: First Reader - March 19, 2004
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